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PART III.

Acts of the Governor General of India in Council, &c.

THE EUROPEAN BRITISH MINORS' BILL, 1874.

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SCHEDULE.

A Bill to provide in the Panjáb and elsewhere for the guardianship of European British Minors.

WHEREAS it is expedient to provide in the Panjáb, Oudh, the Central Provinces, British Burma, Coorg, Ajmer and Mairwára and Assam for the guardianship of minors who are either born in the United Kingdom or any British colony, or are the children or grandchildren of persons so born; it is hereby enacted as follows:—

Preamble.

I.—PRELIMINARY.

1. This Act may be called "The European British Minors Act, 1874."

Short title.

It extends to the territories respectively subject to the government of the Lieutenant-Governor of the Panjáb and to the administration of the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, Ajmer and Mairwára and Assam:

Local extent.

So far as relates to minors, it applies only to persons born in the United Kingdom of Great Britain and Ireland, or any British colony, plantation or settlement other than British India, and to their children and grandchildren.

Personal application.

And it shall come into force at once.

Commencement.

2. In this Act—

Interpretation-clause.

'Minor' means a person who has not completed the age of eighteen years;

'Minor.'

'Guardian' means a person appointed to take care of minor's person or property, or both; and—

'Guardian.'

'Court' means the highest Civil Court of appeal in any territory (other than British Burma) to which this Act extends. In British Burma "Court" means the Court of the Recorder of Rangoon.

'Court.'

II.—APPOINTMENT OF GUARDIAN.

3. A guardian of the person or property, or both, of any child may be appointed by will or other instrument to take effect upon the death of the parent appointing—

Appointment by parent.

(*a*) if the child is legitimate, by the father, or by either parent if the other is dead or incapable of consent;

(*b*) if the child is illegitimate, by the mother.

4. A guardian of the person or property, or both, of a minor residing in any territory to which this Act extends, may be appointed by the Court within the local limits of whose jurisdiction the minor resides.

Appointment by Court.

If the minor has several properties, the Court may, if it think fit, appoint a guardian for each such property.

If the Court appoints a guardian for any property situate beyond the local limits of its jurisdiction, the Court within the local limits of whose jurisdiction such property may be situate, shall accept such guardian as duly appointed and give effect to the order appointing him.

5. Whoever desires to be appointed the guardian of a minor's person or property, or both, may apply to the Court within the local limits of whose jurisdiction the minor resides by petition setting forth the grounds of his application and shewing—

Application for appointment.

(a) the minor's age ;
(b) the nature and amount of his property ;
(c) what relatives he has in India or elsewhere, and—
(d) the willingness of the proposed guardian to act.

The petition shall bear a stamp of five rupees, and the statements therein contained shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

Stamp.

Verification.

The Court, if satisfied that there is ground for proceeding, shall give notice of the application to the person (if any) named in the petition as having the custody or being in possession of the person or property of such minor, as well as to any other person whom the Court may think should receive such notice, and shall fix as early a day as may be convenient for the hearing of the petition.

Notice of application.

6. The Court may direct that the person (if any) having the custody of such minor shall produce him at such place and time as may be appointed by the Court, and may make such order for the temporary custody and protection of the minor's person or property as may appear proper.

Production of minor.

7. On the day fixed for the hearing of the petition or as soon after as may be practicable, the petitioner shall adduce evidence to shew the fitness of the proposed guardian ;

Evidence of fitness.

And the Court shall make such order as it thinks fit in respect to the guardianship of the minor's person or property, or both, and the cost of the case.

8. In cases instituted under this Act, the Court shall be guided by the procedure prescribed in the Code of Civil Procedure in so far as the same is applicable ; and any order made by the Court under section six or section seven may be enforced as if such order had been made in a regular suit.

Procedure.

The forms set forth in the schedule to this Act with such variation as the circumstances of each case require may be used for the respective purposes mentioned in such schedule.

Forms.

And the Court may prescribe rules consistent with this Act for regulating the procedure hereunder.

9. No order passed under this Act in respect to the guardianship of a minor's person or property shall be liable to be contested in any other proceeding.

Orders under this Act not to be contested.

10. In appointing the guardian of a minor, the Court shall be guided by the following considerations :—

Rules for awarding custody of minor.

(a)—By what appears to be for the best interest of the minor in respect to its temporal and its mental and moral welfare ; and if the child is old enough to form an intelligent preference, the Court may consider that preference :

(b)—As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right ; but if, other things being equal, the minor is of tender years, it should be given to the mother : if it is of an age to require education and preparation for labor and business, then to the father.

(c)—The Court shall also consider the following circumstances according as they may bear upon the guardianship of person or of property :

(1) Nearness of relationship;
(2) The wishes of a deceased parent;
(3) Any existing or previous connection of the proposed guardian with the minor's person or property.

III.—THE GUARDIAN'S DUTIES, RIGHTS AND LIABILITIES.

A.—Guardians of the Person.

Duties of guardian of the person.

11. A guardian of the person is charged with the custody of the ward, and must look to his support, health and education.

Ward's religion.

12. A ward is presumed to be of his father's religion; and the guardian, in the absence of the Court's direction to the contrary, must train the ward in such religion. If the child is old enough to form an intelligent preference for any religion, the Court, in giving such direction, shall attend to such preference.

Guardian entitled to custody of ward.

13. Any ward who may desert its home may be compelled by order of the Court to return. But such order may be withheld by the Court if it appear—

(*a*) that the child has been subjected to maltreatment at the hands of its guardian;
(*b*) that the conduct of the guardian in other respects renders him unfit for the office, or—
(*c*) that the ward is on reasonable grounds unwilling to return and is old enough to form an intelligent preference on such a subject.

Removal of ward from jurisdiction.

14. No guardian of the person appointed by the Court shall, without the leave of the Court, remove its ward from the limits of its jurisdiction.

Any person wilfully contravening this prohibition shall be liable by order of the Court to fine not exceeding one thousand rupees, or to imprisonment for a term which may extend to six months, or to both.

B.—Guardians of Property.

Duties of guardian of property.

15. A guardian of the property shall keep safely the property of his ward.

Prohibition of waste.

In the case of immovable property, he shall not suffer any waste, but shall maintain the buildings (if any) thereon and their appertenances out of the rents and profits of the property.

Power to lease.

16. The guardian of any ward entitled to immovable property may make leases for any term not exceeding a year, or from year to year, of such property or any part thereof; and with the sanction of the Court may make such lease of the property or any part thereof for such term of years and subject to such rents and covenants as the Court may direct; but in no such case shall any fine or premium be taken.

The lease shall be settled by an officer of the Court, and a counterpart thereof shall be executed by the lessee, and shall be deposited for safe custody in the Court until the ward completes the age of eighteen years; but all proper parties shall have the use thereof, if necessary, for the purpose of enforcing any covenant therein contained.

Power to use principal for ward's maintenance, &c.

17. The Court may order that the principal of the ward's property, or any part thereof, shall be applied for his maintenance, education or advancement.

Rules as to guardians of property.

18. Every guardian of the property of a minor shall—

(*a*) give such security, if any, as the Court thinks fit duly to account for what he shall receive in respect of the minor's property;

(b) pass his accounts at such periods and in such form as the Court directs ;
(c) pay the balance due from him thereon ;
(d) be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.
(e) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

C.—As to all Guardians.

19. Every guardian, whether appointed by a parent or under this Act, is subject to the control of the Court by which he was appointed.

Guardian under direction of Court.

20. On the death of one of two or more joint guardians, whether appointed by a parent or under this Act, the power continues to the survivor or survivors until a further appointment is made by the Court.

Death of joint guardian.

21. A guardian may be removed by the Court for any of the following causes :—

Removal of guardian.

(a) for abuse of his trust ;
(b) for continued failure to perform its duties ;
(c) for incapacity to perform its duties ;
(d) for gross immorality ;
(e) for having an interest adverse to the faithful performance of his duties ;
(f) for removal from the local limits of the jurisdiction of the Court ;
(g) the arrival in India of some person whose guardianship the Court may think likely to be more beneficial to the minor than the guardianship of the person so removed ;
(h) in the case of a guardian of the property, for insolvency.

In any such case the Court may appoint a successor to the guardian so removed.

Appointment of successor.

Applications for such appointments shall be made in manner provided in section five ; and the procedure thereon shall be in accordance with section seven.

22. The power of a guardian appointed by the parent ceases—

Close of guardian's authority.

(a) by his removal or resignation ;
(b) by the ward's attaining majority, and—
(c) in the case of a female ward, by her marriage.

23. The power of a guardian appointed by a Court is superseded—

Supersession of power of guardian appointed by Court.

(a) by the order of the Court ;
(b) by the ward's attaining majority.

24. Any guardian, whether appointed by a parent or by the Court, desiring to resign his office may apply to the Court to discharge him, and if the Court finds that there is some other proper person whom it may appoint to such guardianship it shall discharge him accordingly.

Resignation of guardian.

SCHEDULE.

I.—Petition for Appointment of Guardian.

(*See Section* 5.)

In the Chief Court of the Panjáb [*or* In the Court of the Judicial Commissioner of].
In the matter of *A. B.*, a minor, by *C. D.*, his next friend.
To Mr. Justice (*or as the case may be*).
The petition of C. D. of

Sheweth—

1. The said *A. B.* is now of the age of years and upwards. He is the same person as 'A, son of *C.* and *L. B.*' named in the paper-writing now produced and shewn to me and marked *A*, and purporting to be a copy under the seal of the General Register Office of the entry No. in the certified copy of entries of births in the district of *D*, in the county of *L*, for the year 187 .

2. The said *A. B.* is absolutely entitled, under the will of *his maternal uncle E. F.*, late of (*residence and addition*) to the following properties (namely) :—

(*a.*) a house in let to *N. O.* as yearly tenant at Rs. 1,000 a year.
(*b.*) Rs. 20,000 in the four per cent securities of the Government of India, standing in the names of *R. S.* and *T. W.*, the trustees of the will of the said *E. F.*
(*c.*) Rs. 800 cash in the hands of the said *R. S.* and *T. W.*, arisen from dividends on the said stock.

3. The only relations of the said *A. B.* now living are—(*a*), your petitioner his maternal uncle; (*b*)—*S. H.*, wife of *T. H.* of (*residence and addition*), the half sister of the said *A. B.*, and (*c*)—*R. D. V* the half-brother of the said *A. B.*, who is a Captain in Her Majesty's Army, and now stationed at Bombay.

4. The said *A. B.* was, at the time of the death of his father, *C. B.*, which happened on the 187 , and is now, residing as a scholar at Bishop Cotton's School, Simla, in the custody of the Rev. M. N. the Headmaster.

5. Your petitioner is willing to act as the guardian of the person and property [*or as may be*] of the said *A. B.* during his minority in case this Hon'ble Court shall think fit to appoint me to that office.

Your petitioner therefore prays this Hon'ble Court—

1. That your petitioner or some other proper person may, upon giving security, be appointed the guardian of the person and property of the said *A. B.* during his minority, or until further order.

2. And that the said *C. D.* or other such guardian may from time to time pass his accounts and pay the balances which shall be certified to be due from him into the Government Treasury to the credit of this matter, and that such balances may be laid out in securities of the Government of India, or in loans or bonds secured by the Imperial Parliament on the revenues of India, or in debentures of railways guaranteed by the Government of India, and the interest to accrue thereon and all accumulations of interest be laid out in like manner.

3. And that the costs of this petition may be taxed as between attorney and client; and that the said *C. D.* or other such guardian may retain and pay the same out of any monies of the said minor which may come to his hands and be allowed the same on passing his said accounts.

Signed *C. D.*

Form of Verification.

(*See Section* 5.)

I, C. D., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

II.—Affidavit of Fitness of Guardian.

(*See Section* 7.)

In the Chief Court, &c, (*or as the case may be*).

In the matter of *A. B.*, a minor, by *C. D.*, his next friend.

I., E. F., of (*residence and addition*), make oath and say as follows:—

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1. I know and have for years past been well acquainted with *C. D.*, the petitioner in this matter.

2. The said *C. D.* is married and has children, namely, a son of the age of years and daughters of the respective ages of and years.

3. The said *C. D.* resides with his wife and children at

4. In my judgment and belief the said *C. D.* is a fit and proper person to be appointed guardian of the person and property of his nephew, the said minor *A. B.*, for the following reasons (*state them*):—

Sworn at this day of 187 . before me *E. F.*

18 (*Official character and description of E. F.*)

III.—Recognizance by a Guardian of property and his surety, after an order appointing him subject to his giving security.

C. D. (*the principal*) of (*residence and addition*) and *L. M.* (*the surety*) acknowledge themselves and each of them acknowledges himself to owe to the Secretary of State for India in Council the sum of Rs. [*to be regulated by the sum which the guardian is likely to receive during the currency of his periodical account*] to be paid to the said Secretary of State for India in Council; and unless they do pay the same, they, the said *C. D.* and *L. M.*, do and each of them doth grant for himself, his executors and administrators that the said sum shall be levied and received from them and each of them and from their and his movable and immovable property.

(*Short title*)
The senior Judge of the Chief Court of the Panjáb [*or as the case may be*] has approved of and allowed this recognizance.
X. Y.,
Registrar.

Dated the day of 187.

WHEREAS, by an order of the Court of , made by (*name the Judge*), in a certain matter there depending, entitled 'in the matter of ' [*Recite the order appointing the guardian subject to his giving security and continue thus*] :—

And whereas (*name the Judge who has approved of the surety and recognizance*) has approved of the above-bounden *L. M.* as surety for the said *C. D.*, and hath also approved of the above written recognizance with the under-written condition as a proper security to be entered into by the said *C. D.* and *L. M.* pursuant to the said order, and in testimony of the said approbation, the Registrar [*or as the case may be*] of the said Court hath signed an allowance in the margin thereof.

Now the condition of the above-written recognizance is such, that if the said *C. D.* shall duly account for every sum of money which he shall receive on account of the property of the said minor *A. B.* and the rents and profits and other income thereof, at such periods as the said Judge shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or Judge hath directed, or shall hereafter direct, then the above recognizance shall be void, otherwise the same shall remain in force.

C. D. | Taken and acknowledged by the above named *C. D.* and *L. M.*, at in this
L. M. | day 187 before me

Signature and style of office of the officer by whom the recognizance is taken.

STATEMENT OF OBJECTS AND REASONS.

Calcutta, the 20th June 1874.

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The charters of the late Supreme Courts and the present High Courts provide sufficiently for the appointment of guardians of the persons and estates of European British infants. But these provisions of course can operate only within the respective jurisdictions of those Courts. Act XI of 1861 provides

for the custody and guardianship of minors, and extends to the whole of British India. But it has been decided in the Panjab that that Act does not apply to European British minors, and it apparently does not enable the Court to appoint guardians of such minors' estates.

The object of this Bill is to supply the defect here indicated, a defect which has been brought to light by two cases in the Panjáb, and which, with the extension of railways and tea-planting, is likely to be more and more felt, not only in that Province, but in Oudh, the Central Provinces, Assam and British Burma.

The Bill applies to the Panjáb and every other part of British India not subject to the jurisdictions of the High Courts at Fort William, Madras, Bombay and Allahabad. It provides for the appointment and removal of guardians of the person or property of European British minors and declares the chief duties, rights and liabilities (*a*) of guardians of the person, and (*b*) of guardians of property. It then contains provisions as to the termination of the authority of guardians; and it is followed by a schedule containing some forms thought likely to be useful in working the proposed Act.

Clause 3 extends somewhat the power to appoint testamentary guardians conferred by the Indian Succession Act, Section 47, which does not provide for cases in which the father is dead or incapable of consent, and may perhaps be held not to apply where the child is illegitimate. Here, and in some other clauses, the New York Civil Code has been followed.

Clause 12 (as to the ward's religion) embodies the recent ruling of the Judicial Committee in *Skinner* v. *Orde*, 8 Moo. P. C. C. N. S. 276.

A. HOBHOUSE.